R277. Education, Administration.

R277-471. Oversight of School Inspections.

R277-471-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "Certified plans' examiner" means a professional who has current certification through the International Code Council which requires a rigorous testing program.
 - C. "Charter schools" means:
- (1) schools acknowledged and operating as charter schools by local boards of education under Section 53A-1a-505 or by the Board under Section 53A-1a-515; and
- (2) charter school applicants that have their applications approved by a chartering entity in accordance with Title 53A, Chapter 1a, Part 5, the Utah Charter Schools Act.
- D. "Charter school responsible person or local charter school board building officer (charter school designee)" means the individual or authority designated by the charter school board who has direct administrative and operational control of charter school construction/renovation and has responsibility for the charter school's compliance with the Code on behalf of the charter school board.
- E. "Certificate of inspection verification" means a form certifying that the entity responsible for providing inspection services has complied with the provisions of Sections 53A-20-104, 53A-20-105, 10-9a-305, 17-27a-305, and 58-56, Uniform Building Standards Act, as well as the provisions of this rule. The form available on the USOE School Finance and Statistics Section Web page: http://www.schools.utah.gov/finance/facilities/default.htm.
- F. "Code" means the state-adopted construction code, including all statutes and administrative rules which control the construction, renovation, and inspection of Utah public school buildings.
- G. "General plan" means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality, consistent with Section 10-9a-103(11).
- H. "Public School District Building Official (SDBO)" means the individual or authority designated by the public school district who has direct administrative and operational control of school district construction/renovation and is responsible for the school district's compliance with the Code.
- I. "Superintendent" means the State Superintendent of Public Instruction.
- J. "School Building Construction and Inspection Resource Manual (Resource Manual)" means a manual which identifies the processes and procedures a school district or charter school shall follow when constructing a new public school building or renovating existing buildings. The Resource Manual was developed by the USOE in response to legislative direction under Section 53A-20-104.5, and is available on the USOE School Finance and Statistics Section Web page:

http://www.schools.utah.gov/finance/facilities/default.htm.

K. "USOE" means the Utah State Office of Education.

R277-471-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities and permits the Board to interrupt disbursements of state aid to any school district or charter school which fails to comply with rules adopted by the Board.
- B. The purpose of this rule is to provide specific provisions for the oversight of permanent or temporary public school construction/renovation inspections and to identify local school board and charter school board responsibilities and accountability to the Board.

R277-471-3. School District Building Official, and Charter School Responsible Person.

- A. Local boards of education and local charter school boards shall be accountable to ensure that all school district and charter school permanent or temporary construction, renovation, and inspection is conducted in accordance with the Code.
- (1) Local school boards shall appoint a School District Building Official (SDBO) who has direct administrative and operational control of all construction, renovation, and inspection of public school district facilities within the school district and shall provide in writing the name of the SDBO to the USOE.
- (2) Charter school boards shall be accountable to the State Charter School Board and the Board to ensure that all charter school permanent or temporary construction, renovation, and inspection is conducted in accordance with the Code. Each local charter school board shall appoint a local charter school board building officer who has direct operational responsibility for construction, renovation, and inspection of the charter school. The local charter school board building officer shall report regularly to the local charter school board.
- (a) The local charter school board shall provide the name of this officer in writing to the Superintendent.
- (b) The local charter school board shall promptly notify the Superintendent in writing of any changes of this individual.
- (c) Following notification, the USOE shall provide a construction project number.
- B. The SDBO shall monitor school district building construction to ensure compliance with the provisions of the Code.
- C. The local charter school board building officer shall monitor all charter school building construction to ensure compliance with the provisions of the Code.
- D. The SDBO and local charter school board building officer shall render interpretations of the Code for the school district or charter school. Such interpretations shall be in conformance with the intent and purpose of the Code, insofar as they are expressed in the Code or in legislative intent.
- E. The SDBO and local charter school board building officer may adopt and enforce supplemental school district and charter school policies under appropriate school district and charter school policies to clarify the application of the provisions of the

Code for school district and charter school personnel.

- F. Before any school district or charter school construction project begins, school districts and charter schools shall obtain a construction project number from the USOE and complete and submit construction project identification forms provided by the USOE for all projects which exceed \$99,999 in cost.
- G. All school district and charter school plans and specifications shall be approved by a certified plans' examiner before any school district or charter school construction project begins.
- H. If a school district or charter school is unable to provide appropriate and proper school construction inspection services, the Superintendent may provide for inspection services from a list of inspectors determined by the Superintendent and charge the school district or charter school for those services. Fees shall be established in advance of inspection services.
- I. For all school district or charter school projects that exceed \$99,999, the SDBO and local charter school board building officers shall:
 - (a) submit inspection summary reports monthly to the USOE;
- (b) submit inspection summary reports monthly to the appropriate local government entity building official;
- (c) submit inspection certificates to the USOE and appropriate local government entity building official;
- (d) maintain all submitted documentation at a designated school district/charter school location for auditing or monitoring;
- (e) identify and provide to the USOE and local government entity building official the total number of inspections with the name, state license number, and disciplines of each inspector;
- (f) ensure that each inspector is adequately and appropriately credentialed;
- (g) sign the final certificate of inspection and verification form, certifying all inspections were completed in compliance with the law and this rule.
- (h) send the final inspection certification and inspection verification to the USOE and to the appropriate local government entity building official upon completion of the project;
- J. Reports required under this rule may be paper or electronic.

R277-471-4. Coordination with Local Governments, Utility Providers and State Fire Marshal.

- A. Prior to developing plans and specifications for a new public school, or the expansion of an existing public school, school districts and charter schools shall coordinate with affected local government land use authorities and utility providers to:
- (1) ensure that the siting or expansion of a school in the intended location will comply with applicable local general plans and land use laws and will not conflict with entitled land uses;
- (2) ensure that all local government services and utilities required by the school construction activities can be provided in a logical and cost-effective manner;
- (3) avoid or mitigate existing and potential traffic hazards, including consideration of the impacts between the new school and

future roadways;

- (4) maximize school, student and site safety.
- B. Prior to developing plans and specifications for a new public school, or the expansion of an existing school, school districts and charter schools shall coordinate with local health departments and the State Fire Marshal.
- C. School districts and charter schools shall maintain documentation for audit purposes of coordination, meetings, and agreements.

R277-471-5. Charter School Land Use Zoning within Municipalities and Counties.

- A. If consistent with the general plan, a charter school shall be considered a permitted use in all zoning districts within a municipality or county, except as provided in R277-471-5D.
- B. Each land use application for any approval required for a charter school, including an application for a building permit, shall be processed on a first priority basis by municipalities and counties.
- C. Parking requirements for a charter school may not exceed the minimum parking requirements for traditional public schools of like size and grade levels or other institutional public uses throughout the municipality or county.
- D. If a municipality or county has designated zones for sexually oriented businesses, or businesses which sell alcohol, a charter school may be prohibited from locations which would defeat the purpose for the zone, unless the charter school provides a waiver of liability for the local government entity by the charter school governing board in an open meeting.

R277-471-6. Public School District/Charter School Construction Inspection.

- A. A public school district or charter school may employ one of three methods for school construction inspection:
- (1) An independent, properly licensed and certified building inspector;
- (2) a properly licensed and certified building inspector, employed by the school district; or
- (3) a properly licensed and certified building inspector approved by the local jurisdiction in which the construction activity occurs.
- B. Procedure for independent properly licensed and certified building inspector:
- (1) The SDBO or charter school designee shall provide, on a monthly basis during construction, a copy of each inspection certificate and a monthly inspection summary regarding the school building to the Superintendent and to the appropriate local governmental entity building official where the building is located for each project that exceeds \$99,999 in cost.
- (2) The school district, through the SDBO, or charter school designee shall identify in the monthly summary reports the total number of inspections as well as the name, state license number and discipline(s) of the state licensed/certified inspectors performing the building inspections.

- (3) The independent building inspector shall:
- (a) not be an employee of the architect, contractor or any subcontractor on the project;
- (b) be approved by the applicable local government or school district building inspector; and
- (c) be properly licensed and certified to perform all of the inspections that the inspector is required to perform.
- (4) After completion of the project, the SDBO or charter school designee shall, upon completion of all required inspections of the school building, file with the USOE and the building inspector of the local jurisdiction in which the building is located, a certificate of inspection verification, certifying that all inspections were completed in accordance with the Code.
- (5) The school district or charter school shall seek a certificate authorizing permanent occupancy of the school building from the Superintendent.
- (6) Within 30 days after the school district or charter school files a request for the issuance of a certificate authorizing permanent occupancy of the school building, the Superintendent shall:
- (a) issue to the school district or charter school a certificate authorizing permanent occupancy of the school building; or
- (b) deliver to the local school board or charter school board a written notice indicating deficiencies in the school district's or charter school's compliance with the inspection findings; and
- (c) mail a copy of the certificate authorizing permanent occupancy or the notice of deficiency to the building official of the local government entity in which the school building is located.
- (7) Upon the local school or charter school board's filing of the certificate of inspection verification and requesting the issuance of a certificate authorizing permanent occupancy of the school building with the USOE, the school district or charter school shall be entitled to temporary occupancy of the school building for a period up to 90 days, beginning on the date the request is filed, if the school district or charter school has complied with all applicable fire and life safety code requirements.
- (8) Upon the school district or charter school remedying any inspection deficiencies and notifying the Superintendent that the deficiencies have been remedied, following certification of the information, the Superintendent shall issue a certificate authorizing permanent occupancy of the school building and mail a copy of the certificate to the building official of the local governmental entity in which the school building is located authorizing permanent occupancy of the school building.
- (9) The Superintendent may contract with any appropriately qualified entity or person(s) to provide inspection services that the Superintendent considers necessary to enable the Superintendent to issue a certificate authorizing permanent occupancy of the public school building.
- (10) The Superintendent may charge the school district or charter school a fee not to exceed the actual cost of performing

the inspection(s) for inspection services that the Superintendent considers necessary to enable the Superintendent to issue a certificate authorizing permanent occupancy of the school building.

- (11) A certificate authorizing permanent occupancy issued by the Superintendent shall be considered to satisfy any municipal or county requirement(s) for an inspection or a certification of occupancy.
- C. Procedures for properly licensed and certified school district building inspector:
- (1) The SDBO or charter school designee shall provide, on a monthly basis during construction, a copy of each inspection certificate and a monthly inspection summary regarding the school building to the Superintendent and to the appropriate local governmental entity building official where the building is located for each project that exceeds \$99,999 in cost.
- (2) The school district, through the SDBO, or the charter school designee shall identify in the monthly summary reports the total number of inspections as well as the name, state license number and discipline(s) of the state licensed/certified inspectors performing the building inspections.
 - (3) School districts:
- (a) After completion of the project, the SDBO shall sign a certificate of inspection verification and a certificate of occupancy certifying that all inspections were completed in accordance with the Code and file the form with the USOE and the building official of the jurisdiction in which the building is located.
- (b) A school district may issue its own certificate authorizing permanent occupancy of a school building if it used a building inspector employed by the public school district for inspection of the school building.
 - (4) Charter schools:
- (a) After completion of the project, the charter school may seek a certificate of occupancy from the SDBO of the school district providing the inspection services.
- (b) If the charter school seeks a certificate of occupancy from the SDBO, the SDBO shall sign a certificate of inspection verification and a certificate of occupancy certifying that all inspections were completed in accordance with the Code and file the form with the USOE and the building official of the municipality or county in which the building is located.
- (c) A certificate authorizing permanent occupancy issued by a SDBO with authority to issue the certificate shall satisfy any municipal or county requirement for an inspection or a certification of occupancy.
- D. Procedure for properly licensed and certified local municipal or county building inspector:
- (1) The SDBO or charter school designee shall provide, on a monthly basis during construction, a copy of each inspection certificate and a monthly inspection summary regarding the public school building to the Superintendent for each project that exceeds \$99,999 in cost.
- (2) The school district, through the SDBO or charter school designee, shall identify in the monthly summary reports the total

number of inspections as well as the name, state license number and discipline(s) of the state licensed/certified inspectors performing the building inspections.

- (3) School districts:
- (a) After completion of the project, the SDBO shall sign a certificate of inspection verification form certifying that all inspections were completed in accordance with the Code and file the form with the USOE and the building official of the jurisdiction in which the building is located.
- (b) A public school district shall seek a certificate authorizing permanent occupancy of a school building from the jurisdiction in which the building is located; a copy of the certificate of occupancy shall be filed with the USOE.
 - (4) Charter schools:
- (a) After completion of the project, the charter school designee shall obtain a completed certificate of inspection verification form from the local municipal or county building inspector certifying that all inspections were completed in accordance with the Code and file the form with the USOE.
- (b) A charter school shall seek a certificate authorizing permanent occupancy of a school building from the jurisdiction in which the building is located; a copy of the certificate of occupancy shall be filed with the USOE.
 - E. A municipality or county may not:
- (1) require school districts or charter schools to landscape, fence, make aesthetic improvements, use specific construction methods or materials, impose requirements for buildings used only for educational purposes, or place limitations prohibiting the use of temporary classroom facilities on school property. All temporary classroom facilities shall be properly inspected to meet the Code.
- (2) require a school district or charter school to participate in the cost of any roadway or sidewalk, or a study of the impact of a school on a roadway or sidewalk, that is not reasonably necessary for the safety of school children and not located on or contiguous to school property, unless the roadway or sidewalk is required to connect an otherwise isolated public school or an existing roadway;
- (3) require a school district or charter school to pay fees not authorized under 10-9a-305 or 17-27a-305;
- (4) require inspection of school construction or assess a fee or other charges for inspection, unless the school district or charter school is unable to provide for inspection by properly licensed and certified inspectors, other than the project architect, contractor or subcontractors;
- (5) require a school district or charter school to pay any impact fee for an improvement project that is not reasonably related to the impact of the school project upon the need that the improvement is to address; or
- (6) impose regulations upon the location of a public school project except as necessary to avoid unreasonable risks to health or safety of students.
- F. A municipality or county may, at its discretion, schedule a time with school district or charter school officials to:

- (1) provide a walk-through of school construction at no cost and at a time convenient to the school district or charter school; and
 - (2) provide recommendations based on the walk-through.

R277-471-7. School Building Construction and Inspection Resource Manual.

- A. The USOE shall develop and distribute to each school district and charter school a Resource Manual.
- B. The Resource Manual shall include process, legal requirements and resource information on school building construction and inspections.
- C. The USOE shall review and, if necessary, update the Resource Manual annually.
- D. The Board, local school boards, charter school boards, as well as school district and charter school personnel shall act consistent with the Resource Manual.

R277-471-8. Annual Construction and Inspection Conference.

- A. The USOE shall sponsor an annual school construction conference for representative(s) from each school district, charter school, and interested persons involved in the school building construction industry. The conference shall:
- (1) provide current information on the design, construction, and inspection process of school buildings;
- (2) provide training on school site selection, design, construction, lowest life-cycle costing, and construction inspection matters as determined by the USOE; and
- (3) offer and discuss information to improve the existing public school building construction inspection program.

R277-471-9. Enforcement.

- A. School districts and charter schools which fail to comply with the provisions of this rule are subject to interruption of state aid dollars by the Board in accordance with Section 53A-1-401(3) and 53A-17a-144(4)(d).
- (1) If a school district or charter school fails to meet or satisfy a school construction inspection requirement or timeline designation under this rule, the school district superintendent or local charter school director shall receive notice by certified mail; and
- (2) If after 30 days the requirement has not been met, the USOE shall interrupt the Minimum School Program fund transfer process to the following extent:
- (a) 10 percent of the total monthly Minimum School Program transfer amount the first month;
 - (b) 25 percent in the second month; and
 - (c) 50 percent in the third and subsequent months.
- B. If the USOE interrupted the Minimum School Program fund transfer process, the USOE shall:
- (1) upon receipt of confirmation that the proper inspection(s) has (have) taken place or upon receipt of a late report, restart the transfer process within the month (if the confirmation or report is submitted before the tenth working day of the month) or

in the following month (if the confirmation or report is submitted after 10:00 a.m. on or after the tenth working day of the month); and

- (2) inform the appropriate Board Committee at its next regularly scheduled Committee meeting; and
- (3) inform the chair of the local governing board if the school district superintendent or charter school director is not responsive in correcting ongoing school construction inspection and reporting problems.
- C. A nonrefundable fine in the amount of one half of one percent of the total construction costs shall be assessed school districts and charter schools that fail to report new or remodeling projects to USOE that exceed \$99,999 before construction begins.
- (1) Nonrefundable fine amounts shall be deducted from the respective school district's and charter school's Minimum School Program allotment at a rate sufficient to complete collection of the nonrefundable fine by the end of the current fiscal year.
- (a) School district nonrefundable fine amounts collected by USOE shall be deposited into the School Building Revolving Account; and
- (b) charter school nonrefundable fine amounts collected by USOE shall be deposited into the Charter School Building Subaccount within the School Building Revolving Account.
- D. Violation of any land use regulation and the substantive provisions of all Codes is a class C misdemeanor and may be subject to further civil penalties, as established by local ordinance.

R277-471-10. Appeals Procedure for Nonrefundable Fines.

- A. School districts or local charter school boards may appeal a fine assessed under R277-471-9C consistent with the following:
- (1) A fine may not be appealed until a final administrative decision has been made to assess the fine by the USOE and the fine has been affirmed by the Board.
- (2) A district superintendent on behalf of a local school board or a local charter board chair on behalf of a local charter school board may appeal an assessed fine by filing an appeal form provided on the USOE website.
- (3) The appeal must be filed within 10 business days of final affirmation of USOE action/withholding by the Board.
- (4) The appeal shall be delivered or provided electronically to the USOE as provided by the appeal form.
- (5) The appeal form shall require an explanation of unanticipated or compelling circumstances that resulted in local board's or charter school's failure to report new construction or remodeling projects that exceed \$99,999.
- (6) The appeal form shall require a notarized statement from the district superintendent or local charter board chair that the information and explanation of circumstances are true and factual statements.
- (7) At least three members of the Finance Committee appointed by the Board shall act as a review committee to review the written appeal.
- (a) The appeal committee may request additional information from the local school board/local charter board.

- (b) The appeal committee may ask the district superintendent or local school district or charter school board chair or school district/charter school business staff to appear personally and provide information.
- (c) The fine shall be presumed appropriate and legitimate when reviewed by the appeal committee.
- (d) The appeal committee shall make a written recommendation within 10 business days of receipt of the appeal request.
- (e) The full Finance Committee of the Board shall review the recommendation.
- (f) The Finance Committee shall make a formal recommendation to the Board to accept, modify or reject the appeal explanation and fine.
- B. The Board, in a regular monthly meeting, may accept or reject the Finance Committee's final recommendation to affirm the fine, modify the fine, or grant the appeal.
- C. Consistent with the Board's general control and supervision of the Utah public school system and given the significant public policy concern for safe schools and cost-effective public school building projects, a local board of education or a local charter board has no further appeal opportunity.

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